

Message Text

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ACTION EB-07

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TRSE-00 USIA-06 PRS-01 SP-02 OMB-01 FEA-01 /082 W

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FM AMEMBASSY PORT AU PRINCE

TO SECSTATE WASHDC 9264

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E.O. 11652: N/A

TAGS: EINV, ETRD, HA

SUBJECT: HAITIAN ELIGIBILITY FOR GSP UNDER "EXPROPRIATION"

PROVISIONS OF TRADE ACT

REF: STATE 025193

1. PENDING DEPARTMENT'S LEGAL ANALYSIS AND FURTHER GUIDANCE, WE ASSUME FOR PURPOSES OF THIS REPLY THAT VIRTUALLY ANY UNSETTLED US CITIZEN CLAIM AGAINST GOH RESULTING FROM CONTRACTUAL RELATIONSHIPS WITH GOH ENTITIES, OR ANY CASE IN WHICH CLAIMANT IS DISSATISFIED WITH OUTCOME, COULD BE INTERPRETED (AT LEAST BY CLAIMANT) AS HAVING EXPROPRIATORY EFFECT AND THUS WILL BE EXAMINED AND EVALUATED BY THE DEPARTMENT.

2. ACCORDINGLY, WE HAVE ATTEMPTED TO SUMMARIZE IN THIS MESSAGE ALL SUCH CASES KNOWN TO THIS EMBASSY. ON OLDER CASES (GOING BACK MORE THAN 3 YEARS), OUR KNOWLEDGE IS SPOTTY AND CANNOT BE PRESUMED DEFINITIVE, SINCE EMBASSY FILES HAVE BEEN RETIRED PER REGULATIONS. DEPARTMENT WILL PRESUMABLY WISH SEARCH ITS OWN RECORDS, USING OUR INFORMATION AS LEADS. THE PRESENTLY ACTIVE DISPUTES (PARAS 10, 11, 12 BELOW) HAVE BEEN THE SUBJECT OF EXTENSIVE CURRENT REPORTING. THEY ARE EITHER

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UNDER NEGOTIATION WITHIN THE MEANING OF SUBSECTION D (II) OR

CONSIDERABLE DOUBT EXISTS AS TO VALIDITY OF CLAIMS INVOLVED.

3. AMERICAN CITIZEN CLAIMS DATING FROM THE 1950'S - IN EARLY 1962, THE GOH ESTABLISHED A SPECIAL COMMISSION FOR THE EXAMINATION AND SETTLEMENT OF PRIVATE AMERICAN DEBTS (MOST OF WHICH DATED FROM THE 50'S) IN ORDER TO MEET THE REQUIREMENTS OF THE DIRKSEN AMENDMENT TO THE U.S. FOREIGN ASSISTANCE LEGISLATION OF THAT PERIOD. A LIST OF 14 U.S. CITIZENS WITH CLAIMS WAS CONTAINED IN THE DEPARTMENT'S A-22 OF OCTOBER 10, 1962, AND A FURTHER LIST OF CASES KNOWN TO THE EMBASSY WAS PROVIDED IN THE EMBASSY'S A-164 OF OCTOBER 24, 1962 (NO COPY OF THE LATTER IS AVAILABLE IN EMBASSY FILES). NO BACKGROUND ON THESE CASES IS AVAILABLE HERE, NOR IS THERE ANY RECORD OF FINAL ACTION, I.E., IF CLAIMS WERE PAID, WERE DEEMED INVALID, OR WERE EVENTUALLY DROPPED. ONLY ONE OF THESE EARLY CASES HAS BEEN BROUGHT TO THE ATTENTION OF THE EMBASSY IN THE LAST 3 YEARS (SEE PARA 4).

4. MRS. X.G. NICHOLS - MRS. NICHOLS HAS REPORTEDLY RENEWED AN EARLIER REQUEST TO THE GOH FOR PAYMENT OF A BOND ISSUED IN APRIL 1958 IN THE AMOUNT OF \$38,000, WHICH RESULTED FROM LIQUIDATION OF A FIRM NAMED HABANEX. HAITIAN OFFICIALS CLAIM THE BOND WAS PAID BUT HAVE NOT YET PRODUCED PROOF OF THIS STATEMENT. NEITHER MRS. NICHOLS NOR HER LAWYER HAS APPROACHED THE EMBASSY DIRECTLY. INFORMATION ON THE CLAIM HAS BEEN REQUESTED FROM THE DEPARTMENT (CARBONE LETTER OF FEB 7, 1975 TO STRASSER, ARA-LA/CAR).

5. GEORGE DE MOHRENSCHILDT - MR. DE MOHRENSCHILDT INFORMED THE DEPARTMENT (A-197 OF JANUARY 10, 1974) THAT HE ENTERED INTO TWO CONTRACTS WITH THE GOH IN 1963, INVOLVING A MINERALS CONCESSION AND A GEOLOGICAL SURVEY, AND THAT HE HAS NEVER RECEIVED PAYMENT. THE EMBASSY DISCUSSED MR. DE MOHRENSCHILDT'S CLAIM WITH SEVERAL LOCAL LAWYERS TO DETERMINE IF THEY WOULD ACCEPT HIS CASE. NONE OF THE LAWYERS WAS WILLING TO DO SO PRIMARILY BECAUSE HE ALLEGEDLY NEVER DELIVERED HIS SURVEY TO THE GOH, AND THEY CONSIDERED THE CLAIM WAS NOT SUFFICIENTLY ESTABLISHED.

6. VALENTINE PETROLEUM AND CHEMICAL CORPORATION - (AID SUBROGATION CLAIM). CASE RESOLVED BY THE SALE OF COMPANY STOCK TO THE HAITIAN GOVERNMENT. FINAL PAYMENT WAS RECEIVED ON JULY 10, 1973.

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7. COMPAGNIE D'ECLAIRAGE ELECTRIQUE - WHEN THIS US-OWNED COMPANY TURNED OVER PLANT TO GOH UPON EXPIRATION OF CONCESSION IN AUGUST 1971, A DISPUTE AROSE OVER SETTLEMENT OF ACCOUNTS AND GOH INDEBTEDNESS. IN NOVEMBER 1973 GOH FINALLY MADE A CASH PAYMENT AND ISSUED BONDS PAYABLE THE END OF 1975. SINCE NOTHING FURTHER HAS BEEN HEARD FROM THE US INVESTORS, THE EMBASSY ASSUMES THE CASE IS CLOSED.

8. HEMO-CARIBBEAN - THE US FIRM SIGNED A CONTRACT WITH THE GOH IN SEPTXMBER 1970 FOR THE ESTABLISHMENT AND OPERATION OF A PLASMAPHERESIS CENTER IN HAITI. PROJECT ACQUIRED WIDESPREAD UNFAVORABLE PUBLICITY ("SELLING BLOOD OF POOR HAITIANS"). IN NOVEMBER 1972 THE GOH CLOSED THE CENTERS AND ANNULLED THE CONTRACT, STATING THE COMPANY HAD FAILED TO MEET CONTRACT REQUIREMENTS ON SANITATION, HEALTH STANDARDS, ETC. COMPANY DISCUSSED MATTER WITH GOH OVER A 6-MONTH PERIOD, URGING THAT CENTERS BE REOPENED, BUT IN MID-1973, GOH BROKE OFF TALKS. US INVESTORS REQUESTED ASSISTANCE FROM THE DEPARTMENT IN 1973, BUT NO REPRESENTATIONS HAVE BEEN RECEIVED IN PAST YEAR. EMBASSY PRESUMES SUBJECT HAS BEEN DROPPED BY ALL CONCERNED.

9. I.S. JOSEPH - IN MARCH 1973, TWO WEEKS AFTER THE I.S. JOSEPH COMPANY SIGNED A CONTRACT WITH THE GOH TO CONSTRUCT AN OIL CRUSHING FACILITY IN HAITI, THE CONTRACT WAS CANCELLED. THE COMPANY CONTINUED DISCUSSIONS WITH THE GOH FOR A YEAR IN AN ENDEAVOR TO RENEGOTIATE THE CONTRACT, BUT COULD NOT COME TO AN AGREEMENT. ALTHOUGH THE COMPANY REQUESTED SOME MORAL SUPPORT FROM THE EMBASSY DURING THIS PERIOD, NO CLAIMS WERE MADE AFTER THE NEGOTIATIONS WERE BROKEN OFF. THE EMBASSY HAS BEEN INFORMED BY OTHER SOURCES THAT THE COMPANY HAS RECENTLY REOPENED ITS OFFER TO CONSTRUCT AN OIL CRUSHING FACILITY IN HAITI AND THAT STUDIES AND A PROJECT PROPOSAL WILL BE PRESENTED TO THE GOH IN MARCH OF 1975.

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10. DUPONT CARIBBEAN/DON PIERSON - IN DECEMBER 1970 THE GOH SIGNED A CONTRACT AUTHORIZING THE DUPONT CARIBBEAN COMPANY (PRESIDENT DON PIERSON) TO PROCEED WITH THE DEVELOPMENT OF THE ILE DE LA TORTUE FOR INDUSTRIAL AND TOURIST PURPOSES, INCLUDING THE ESTABLISHMENT OF A FREE PORT ZONE. IN MARCH 1973 THE GOH TOOK THE COMPANY TO COURT DEMANDING CANCELLATION OF THE CONTRACT, BOTH FOR NON-PERFORMANCE AND BECAUSE CONTRACT WAS UNCONSTITUTIONAL. COURT FOUND FOR THE GOVERNMENT. AN APPEAL WAS MADE BY THE US FIRM, FIRST TO THE APPEALS COURT AND THEN TO THE SUPREME COURT, BUT THE GOH WAS UPHELD IN BOTH INSTANCES. PIERSON HAS ATTEMPTED TO PERSUADE THE GOH TO REINSTATE THE CONTRACT BUT HAS NOT BEEN SUCCESSFUL. PIERSON HAS CLAIMED CONTRACT CANCELLATION IS EQUIVALENT EXPROPRIATION AND HAS REQUESTED THE ASSISTANCE OF THE DEPARTMENT OF STATE IN OBTAINING EITHER REINSTATEMENT OF HIS CONTRACT OR REIMBURSEMENT FROM GOH FOR HIS INVESTMENT. PIERSON HAS BEEN ASKED TO SUPPLY SUPPORTING DATA ON AMOUNTS OF EXPENDITURES AND INVESTMENT IN HAITI. THE CASE IS A COMPLICATED ONE INVOLVING CHARGES ON BOTH SIDES AND IS STILL UNDER REVIEW BY DEPARTMENT OF STATE LEGAL OFFICERS. PROJECT IS FURTHER COMPLICATED BY INVOLVEMENT OF TRANS-LINEAR CORP., WHICH MAY ALSO CLAIM EXPROPRIATION IF IT CANNOT WORK OUT WITH GOH VIABLE MEANS FOR CONTINUING PROPOSED DEVELOPMENT ACTIVITY ON TORTUE. NEGOTIATIONS ON NEW CONTRACT ARE CONTINUING.

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11. AEROTRADE, INC. (JAMES O. BYERS) - THE US COMPANY AEROTRADE ENTERED INTO A CONTRACT WITH THE GOH TO PROVIDE ARMAMENTS, PATROL BOATS, HELICOPTERS, AND OTHER EQUIPMENT. THE COMPANY CLAIMS THE GOH CANCELLED THE CONTRACT WITHOUT WARNING AND STILL OWES THE COMPANY FOR GOODS SUPPLIED. THE GOH CLAIMS THAT THE COMPANY SUPPLIED INFERIOR EQUIPMENT, THAT ADVANCE PAYMENT WAS MADE FOR EQUIPMENT WHICH WAS NEVER SHIPPED, AND THAT CONSEQUENTLY THE US COMPANY OWES MONEY TO THE GOH. IN 1973, AEROTRADE BROUGHT SUIT AGAINST HAITI IN THE SOUTHERN DISTRICT OF NEW YORK. THE COURT DECIDED THE GOH WAS ENTITLED TO SOVERIGN IMMUNITY AND DISMISSED THE CLAIM. THE COMPANY THEN INSTITUTED SUIT AGAINST AID AND REQUESTED THAT AID BE INSTRUCTED TO INVOKE THE HICKENLOOPER AMENDMENT. THE COURT, ON OCTOBER 17, 1974, DECIDED THAT THE COMPANY LACKED STANDING TO MAINTAIN THE ACTION AND THAT THE COURT ITSELF LACKED JURISDICTION OVER THE SUBJECT MATTER. THIS CASE IS ALSO COMPLICATED, INVOLVING CHARGES AND COUNTER-CHARGES. NEITHER THE EMBASSY NOR THE DEPARTMENT HAS MADE A FULL ASSESSMENT OF THE VALIDITY OF THE AEROTRADE CLAIM. HOWEVER, ON AT LEAST ONE OF THE POINTS AT ISSUE, THE EMBASSY HAS RECEIVED EVIDENCE SUPPORTING THE ASSERTIONS OF THE GOH.

12. TELE-HAITI - IN DECEMBER TQOURN THE GOH UNILATERALLY REVOKED THE

MONOPOLY ON TELEVISION BROADCASTING WHICH HAD BEEN GRANTED TO THE COMPANY TELE-HAITI BY CONTRACT. US INVESTORS, WHO OWN 87 PERCENT OF THE COMPANY'S SHARES, CLAIM THAT WITHDRAWAL OF THE MONOPOLY CONSTITUTES A BREACH OF CONTRACT FOR WHICH COMPENSATION IS ESSENTIAL. DISCUSSIONS BETWEEN THE GOH AND THE US INVESTORS ARE CONTINUING, WITH FURTHER MEETING ABOUT TO TAKE PLACE. THE EMBASSY HAS CONVEYED TO THE GOH THE BELIEF THAT A PROMPT RESOLUTION OF THE MATTER WOULD SERVE THE INTERESTS OF ALL CONCERNED. THE DEPARTMENT IS BEING KEPT INFORMED OF PROGRESS IN THIS CASE.

13. COMMENT - RE PARA 6 OF REFTEL, WE STRONGLY URGE THAT DEPARTMENT GIVE FURTHER STUDY TO GENERAL ISSUES RAISED BY FOREGOING CASES AND PROVIDE FURTHER GUIDANCE BEFORE MISSION MAKES ANY COMPREHENSIVE DEMARCHE ON THESE CASE AS RELATED TO ELIGIBILITY FOR GSP. EMBASSY HAS IN ANY CASE BEEN URGING AMICABLE SETTLEMENTS ON BAISE MERITS OF INDIVIDUALS CASES SINCE SIMILAR PROVISIONS OF LAW LONG APPLIED TO AID FURNISHED UNDER FOREIGN ASSISTANCE ACT. BUT IF WE LIMITED OFFICIAL USE

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SHOULD OFFICIALLY CALL GOH ATTENTION TO THESE PROVISIONS OF TRADE ACT WITHOUT MORE PRECISE IDEA OF HOW THEY WILL BE APPLIED TO HAITI AND OTHER LDCS, WE WILL RISK (AT A MINIMUM) OBSCURING IN GOH EYES ANY OF THE POSITIVE SIDE OF FSP AND OTHER TRADE ACT GOALS.

14. WHENEVER WE MAKE ANY SUCH DEMARCHE, GOH WILL UNDOUBTEDLY WANT ANSWERS TO QUESTIONS SUCH AS THE FOLLOWING:

(A) IF USG HAS NOT CUT OFF AID ASSISTANCE BECAUSE OF PERTINENT DISPUTES, WOULD IT DENY ELIGIBILITY FOR FSP?

(B) IS USG GOING TO PRESS, AS CONDITION FOR GSP, FOR CONCESSIONS TO CLAIMANTS OF DUBIOUS MERIT?

(C) WHAT ARE THE APPLICABLE PROVISIONS OF INTERNATIONAL LAW ON WHICH SUBSECTION D (II) IS BASED?

(D) HOW CAN A GOVERNMENT LIKE GOH, WHICH NEEDS TO CONTRACT DIRECTLY WITH FOREIGN SUPPLIES AND INVESTORS, PROCEED TO REVOKE CONTRACTS FOR NON-PERFORMANCE BY AMCITS IN MANNER WHICH WOULD PRECLUDE CLAIMS OF DEFACTO EXPROPRIATION?

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